1949.

File No. O. Torts
Legal Deptt.
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Subject:— Opinions under the Law of Torts ——

P-9/E

File No. O. Torts/49

301-A

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Office of the R. L. A.

Cost of advertisemen..

Government cannot recover the costs of the advertisement from the Manager of "Goregaon Milk Scheme" but in view of the fact that he was prepared to insert an advertisement at his own expense, he may be invited to recoup Government for the costs incurred by them.

Id/-
1/3
Remembrancer of Legal Affairs.

U.R. to Milk Commissioner, No. 2398, dated the 1st March 1949.

Office of the R. L. A.

Damage to P.W.D. Jetty at Dharamtar.

The liability of the company to pay compensation for the damage caused to the jetty would depend upon whether the conduct of the master of the vessel amounts to negligence or breach of duty to use reasonable care. If the version of the custom depoy is true, it means that the master of the vessel was so careless in removing the vessel from the jetty that he caused the vessel to climb on the jetty and thus damaged the jetty. This would be clear case of tort for which the company would be liable. If however there is any truth in the version of the company that "during an unusual swell the steel 2½" wire gave way and the v-essel climbed the jetty by the force of the tide", the question for decision would be whether the master of the vessel was bound to anticipate and guard against such extraordinary events so that the liability could be fastened on the company for his default.

In view of this legal position further investigation may be done and to enable the R.L.A. to give a definite opinion a full and correct statement of the case with evidence may be supplied to him as to how the incident really occurred, whether the unusual swell as alleged by the company occurred and whether the master of the vessel was bound to anticipate and guard against it.

M/-

S/4

Remembrancer of Legal Affairs.

U.R. to P.W.D., No. 3850, dated the 8th April 1949.
Please see R.L.A.'s opinion No. 10205 dt. 9/9/49.

Office of the R. L. A.

The two principal allegations made against Dr. Pradhan in the article under considerations are as follows:-

(1) "You might consult your conscience as to what you did after Mr. P.K. Savant retired. How did it come about that you repaid a debt of thousands of rupees, built a new bungalow and got a new car and other domestic furniture out of your salary. Does not the amount of lakhs of rupees spent daily upon the refugees come out of the money earned by hard labour by poor Maharashtrians? Tell the people of Maharashtra who sweat to earn that money that I have used the amount honestly for the purpose of the refugees and have improved their condition."

(2) "Rs.2,100 were sanctioned for the ..... scheme. Where is that money? Is it in Dr. Pradhan's pocket or in the drawer of Major General Bhosle's desk?"

2. These statements contain very clear insinuations that Dr. Pradhan misappropriated to his own use the money intended by Government to be spent upon refugees. The statements are clearly defamatory, and assuming that justification cannot be pleaded, the only other defence, namely, of fair comment would not be available. "There is no doubt that the public acts of a public man may be lawfull made the subject of fair comment or criticism not only by the press but by all members of the public. But the distinction cannot be too clearly borne in

mind between comment or criticism and allegations of fact, such as, that disgraceful acts have been committed. It is one thing to comment upon or criticise even with severity the acknowledged or proved acts of a public man and another to assert that he has been guilty of particular acts of misconduct, and the same rule applies to an imputation of corrupt or dishonourable motive." Gatley on Libel and Slander p.372.

3. An action for defamation would, therefore, lie in this case. It is a matter for Government's consideration whether, in accordance with rule 31 of the Bombay Civil Services Conduct, Discipline and Appeal Rules, Government should bear the costs of the proceedings, or whether Dr. Pradhan should institute the proceedings at his own expense, and if so, whether in t-he event of a decision in his favour Government should reimburse him.

Id/-

4/6

Remembrancer of Legal Affairs.

U.R. to Rehabilitation De.tt. No.348-Confl. dated the 6th June 1949.

Office of the R. L. A.

Liability of Government for tortuous acts of Government servants.

Criminal Procedure Code. Section 51.

Government would not be liable to reimburse Narainlas the loss sustained by him by the embezzlement by Government servants of the articles and cash seized under section 51 of Criminal Procedure Code (see Uma Prasad vs. Secretary of State 18 Lah. 388). It is open to Narainlas to proceed against the Government servants who were responsible for the loss caused to him.

Sd/-

5/7

Remembrancer of Legal Affairs.

U.R. to H.D. No. 8051, dated the 16th July 1949.

(Fl. also see R.L.A.'s opinion No. 11879, dated 25/10/49, p.47 ante

Office of the R.L.A.

Damage to P.W.D. Jetty at Dharamtar.

R.L.A's opinion No. 5850, dt. 8-4-49.

The report at page 59 ante discloses gross negligence on the part of the master of the vessel "Padam" and the company cannot escape its liability for the damage caused to the P.W.D. jetty. If the Company refuses to make good the loss, steps may be taken against the Company in a court of law.

Sd/-

7/9

Remembrancer of Legal Affairs.

U.R. to P.W.D., No. 10203, dated the 9th Sept. 1949

Liability of Government for tortuous acts of Government servants.

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R.L.A's opinion No. 8051 dated 16-7-1949.

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The judgment of the Presidency Magistrate is not satisfactory, for if accused No. 2 were innocent, accused No. 1 should have been required to account for the articles failing which a necessary presumption should have been drawn against him; and the court was not justified in trying to make out a defence for him of the loss of the articles. However that may be, the legal position regarding the liability of Government as stated by the R.L.A. in his last opinion remains unaffected. Mr. Marandas may be informed that Government is not legally liable to reimburse and that he may proceed against the two constables for relief if he is so advised.

Id/-

25/10

Remembrancer of Legal Affairs.

U.R. to M.D. No. 11979 dated the 25th October 1949.

Office of the R.L.A.

Government appears to have a good case against Mr. N.C. Wadia for damages for the loss of service and other expenses incurred (Attorney General v. Valle-Jones 1935, 2K.B.209). A notice may therefore issue as proposed by the Home Department.

Id/-

22/11

Remembrancer of Legal Affairs.

U.R. to H.D., No. 13452, dated the

24th November 1949.